

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**DESI ARNEZ LEWIS,**

**Petitioner,**

**v.**

**ACTION NO. 2:13-cv-549**

**HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,**

**Respondent.**

**FINAL ORDER**

Before the Court is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's motion to dismiss, ECF No. 3. In his petition, the *pro se* Petitioner challenges the constitutionality of his 1997 judgment of conviction and sentence in the Circuit Court for the City of Petersburg, where a jury convicted him of second-degree murder and use of a firearm in the commission of murder. The Petitioner was sentenced to forty years of imprisonment for the second-degree murder conviction, and an additional three years of imprisonment for the firearm charge, for a total forty-three year term of incarceration.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation filed on April 1, 2014, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice as barred by the statute of limitations. ECF No. 8. The parties were advised of their


right to file written objections to the Report and Recommendation. On April 18, 2014, the Court received the Petitioner's objections to the Report and Recommendation. ECF No. 9. The Court has not received a responsive brief to those objections from the Respondent, and the time to so file has expired. Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court reviewed *de novo* the Magistrate Judge's Report and Recommendation, and the Petitioner's objections thereto.

After review, the Court fully accepts the findings and recommendations of the Magistrate Judge, and the Court hereby **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 8, in its entirety as the Court's own opinion. Accordingly, the Petitioner's objections, ECF No. 9, are **OVERRULED** in full, and the Respondent's motion to dismiss, ECF No. 3, is **GRANTED**. The petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.

  
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Raymond A. Jackson  
United States District Judge  
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UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: *May 16, 2014*